

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GEOFFREY L. MCCABE, AN )  
INDIVIDUAL RESIDING IN )  
CALIFORNIA, )  
 )  
PLAINTIFF, ) CASE NO. 10CV0581-JLS(JMA)  
 )  
VS. ) SAN DIEGO, CALIFORNIA  
 )  
FLOYD ROSE GUITARS, ET AL., ) THURSDAY  
 ) JUNE 6, 2013  
DEFENDANTS. ) 7:01 P.M.  
\_\_\_\_\_)

TRANSCRIPT OF SETTLEMENT AGREEMENT  
BEFORE THE HONORABLE JAN M. ADLER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF: SAN DIEGO IP LAW GROUP, LLP  
BY: TREVOR Q. CODDINGTON, ESQ.  
JAMES V. FAZIO, ESQ.  
12526 HIGH BLUFF DRIVE, SUITE 300  
SAN DIEGO, CA 92130

FOR THE DEFENDANT: PARKER, SHUMAKER, MILLS, LLP  
BY: WILLIAM K. MILLS, ESQ.  
JUSTIN D. DENLINGER, ESQ.  
801 SOUTH FIGUEROA STREET  
SUITE 1200  
LOS ANGELES, CA 90017

TRANSCRIPT ORDERED BY: JUSTIN DENLINGER, ESQ.

TRANSCRIBER: CAMERON P. KIRCHER

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;  
TRANSCRIPT PRODUCED BY TRANSCRIPTION.

1 SAN DIEGO, CALIFORNIA - THURSDAY, JUNE 6, 2013

2 7:01 P.M.

3 THE CLERK: CASE NUMBER 10CV0581-JLS(JMA), MCCABE  
4 VERSUS FLOYD ROSE GUITARS, ET AL., PLACING SETTLEMENT ON THE  
5 RECORD.

6 THE COURT: GOOD EVENING, EVERYONE. I WANT TO THANK  
7 EVERYONE FOR THE SUCCESSFUL RESOLUTION OF THE CASE THAT WAS  
8 NEGOTIATED TODAY.

9 AND NOW I'D LIKE TO HAVE APPEARANCES OF COUNSEL,  
10 PLEASE.

11 MR. CODDINGTON: TREVOR CODDINGTON AND JAMES FAZIO  
12 OF SAN DIEGO IP LAW GROUP REPRESENTING PLAINTIFFS JEFFREY  
13 MCCABE AND KAHLER INTERNATIONAL, INC.

14 THE COURT: THANK YOU.

15 MR. MILLS: GOOD AFTERNOON, YOUR HONOR. WILLIAM  
16 MILLS, JUSTIN DENLINGER, PARKER, SCHUMAKER, MILLS, ON BEHALF  
17 OF ALL DEFENDANTS. AND ALSO JILL LITTENBERG OF THE LERNER  
18 DAVID FIRM IN NEW JERSEY IS HERE AS WELL.

19 THE COURT: THANK YOU.

20 ALL RIGHT. IT'S MY UNDERSTANDING THAT MR. MILLS IS  
21 GOING TO PUT THE ESSENTIAL TERMS OF THE SETTLEMENT ON THE  
22 RECORD.

23 MR. MILLS: THANK YOU, YOUR HONOR.

24 THE PARTIES HAVE AGREED THAT -- TO SETTLE THE  
25 PENDING LITIGATION AND ALL OF ITS RELATED -- ALL MATTERS

1 RELATING TO THE FLOYD ROSE SPEEDLOADER TREMOLO PRODUCTS AS  
2 THEY EXIST TODAY AND WERE RAISED IN THIS CASE. AND THIS  
3 IS -- WE ARE CONTEMPLATING THAT THIS WILL RESULT IN A FORMAL  
4 DOCUMENT TO BE EXECUTED LATER.

5 THE DEFENDANTS WILL PAY TO PLAINTIFFS \$300,000  
6 WITHIN 14 CALENDAR DAYS. PLAINTIFFS WILL GIVE DEFENDANTS  
7 INSTRUCTIONS ABOUT WIRE INSTRUCTIONS OR CHECK, WHATEVER IT IS  
8 YOU WANT, PLEASE LET US KNOW.

9 THE ITC ACTIONS THAT HAVE PREVIOUSLY BEEN INITIATED  
10 BY MR. MCCABE AND MR. KAHLER REGARDING THE SPEEDLOADER  
11 PRODUCTS WILL BE DISMISSED OR DROPPED, WHATEVER THE  
12 APPROPRIATE TERM IS.

13 THERE WILL BE -- THERE IS GOING TO BE A LICENSE  
14 AGREEMENT BETWEEN MR. MCCABE AND MR. ROSE, WHICH WILL INVOLVE  
15 A 50 CENTS PER STRING SET FEE -- ROYALTY, EXCUSE ME. A 50  
16 CENT PER STRING SET FEE, \$10 PER SPEEDLOADER TREMOLO ON A  
17 GUITAR WITH A PRICE, DEALER NET, LESS \$599; \$20 FEE FOR EACH  
18 SPEEDLOADER TREMOLO ON A GUITAR WITH A PRICE, DEALER NET, IN  
19 EXCESS OF \$600, \$600 OR MORE; AND A 7.5 PERCENT ROYALTY ON --  
20 DEALER NET, WHICH IS MR. ROSE'S INVOICE PRICE, ON FLOYD ROSE  
21 BRANDED GUITARS.

22 AS FOR THE ROYALTIES, THERE WILL BE A -- THE  
23 ROYALTIES WILL BE PAID QUARTERLY AND BE SUBJECT TO A STANDARD  
24 AUDIT, PERFORMED AT MR. MCCABE'S -- AT MR. MCCABE'S COST OR  
25 EXPENSE. AND ALL REPORTING CEASES WITH THE -- WITH THE RIGHT

1 TO THE LAST EXPIRED -- WITH THE TERMINATION OF THE LAST  
2 EXPIRED PAYMENT ON THE PATENT.

3 I'M GOING TO LET MR. XAVIER FROM DAVITT & HANSER  
4 EXPLAIN DAVITT & HANSER'S CONTRIBUTIONS TO THE SETTLEMENT,  
5 YOUR HONOR.

6 THE COURT: THANK YOU.

7 MR. MILLS: YOU JUST HAVE TO SAY WHAT YOU'RE GOING  
8 TO DO.

9 MR. XAVIER: WELL, WE WILL DISCUSS -- IF YOU GUYS  
10 DISAGREE WITH ANYTHING, PLEASE LET ME KNOW. I'VE NEVER  
11 DONE THIS.

12 DAVITT & HANSER AGREES TO TAKE ONE OF MR. MCCABE'S  
13 TREMOLOS OF CHOICE, THE SALE PRICE OF THAT TREMOLO IS TO BE  
14 DETERMINED AT A LATER DATE. WE WILL PUT IT ON ONE BC RICH  
15 MODEL OF THEIR CHOICE, OR COLLECTIVELY WE WILL MAKE THE  
16 DECISION WHICH MODEL IT GOES UPON. WE WILL TAKE THAT GUITAR  
17 TO OUR TRADE SHOWS THAT WE TAKE AND DEBUT AND LAUNCH ALL OF  
18 OUR PRODUCTS AND TREAT IT LIKE IT WAS ONE OF OUR OWN MODELS.

19 WE WILL HANG IT ON THE WALL AT NAMM, DRAW ATTENTION  
20 TO IT BY OUR SOCIAL MEDIA VIA FACEBOOK, TWITTER, VINE, ALL  
21 THE OTHER SOCIAL MEDIA CITES, AND ALSO PLACE THAT GUITAR ON  
22 OUR WEBSITE, TRYING TO DRIVE SALES FOR THE PRODUCT IN GOOD  
23 FAITH TO HELP HIM BUILD HIS BRAND.

24 THE COURT: THANK YOU.

25 MR. MILLS: AND TO CLARIFY, THAT MEANS NO PRINT

1 ADVERTISING.

2 MR. XAVIER: NO PRINT ADVERTISING. JUST ALL SOCIAL  
3 MEDIA. BC RICH DOES NOT DO PRINT ADVERTISING. WE USE  
4 DIGITAL MEDIA FOR ALL OF OUR FORMS.

5 THE COURT: SO SOCIAL MEDIA AND THE BC RICH WEBSITE?

6 MR. XAVIER: AT THE BCRICH.COM WEBSITE, YES, SIR.

7 MR. MILLS: THANK YOU VERY MUCH.

8 THE PARTIES HAVE AGREED TO INCLUDE IN THE WRITTEN  
9 DOCUMENT A STANDARD NONDISGORGEMENT CLAUSE, A STANDARD  
10 CONFIDENTIALITY CLAUSE, A PREVAILING PARTY ATTORNEYS' FEES  
11 CLAUSE IN CASE -- IN CASE A DISPUTE ARISES TO ENFORCE THE  
12 AGREEMENT.

13 WE WILL MAKE -- WE MAKE SPECIFIC NOTE THAT THE  
14 CURRENTLY -- THE PENDING TRADE DRESS SUIT IN THE CENTRAL  
15 DISTRICT CASE WILL -- IS NOT AFFECTED BY THIS SETTLEMENT. IT  
16 IS SPECIFICALLY EXCLUDED.

17 THE SPEEDLOADER SOLD BY FLOYD ROSE OR FLOYD ROSE'S  
18 SPEEDLOADERS SOLD IN THE FUTURE WILL CONTAIN A PATENT MARKING  
19 REFLECTING LICENSE BY MR. -- I'M SORRY, WILL INCLUDE THE  
20 SPECIFIC PATENTS-IN-SUIT. I'M SORRY. THE NONEXPIRED  
21 PATENTS.

22 ALL RIGHT. AND THE CHOICE OF LAW WILL BE CALIFORNIA  
23 FOR THE AGREEMENT, YOUR HONOR.

24 AM I MISSING ANYTHING?

25 MR. CODDINGTON: DID YOU INCLUDE AN AUDIT PROVISION?

1           MR. MILLS: I DID.

2           MR. CODDINGTON: THANK YOU.

3           MR. MILLS: I DID SAY ATTORNEYS' FEES. AND I ALSO  
4 WANT TO MAKE SURE THAT I DIDN'T MISSPEAK, THAT THE CHECK FOR  
5 \$300,000 WILL BE DELIVERED WITHIN 14 DAYS AFTER THE EXECUTION  
6 OF THE WRITTEN AGREEMENT.

7           THE COURT: ALL RIGHT. THANK YOU.

8 DOES PLAINTIFF'S COUNSEL HAVE ANYTHING ELSE TO ADD?

9           MR. CODDINGTON: JUST CLARIFY THAT THE ITC  
10 INVESTIGATION NUMBER THEY ARE REFERRING TO IS NO. 337TA708,  
11 AND THAT PLAINTIFFS AGREE NOT TO ENFORCE THE CONSENT ORDER.

12           THE COURT: OKAY. THANK YOU. ALL RIGHT. THANK YOU  
13 VERY MUCH, COUNSEL.

14           AT THIS TIME I'M GOING TO ASK THE PARTIES WHETHER  
15 THEY ASSENT TO THE TERMS OF THE SETTLEMENT. I WANT TO  
16 EXPLAIN TO ALL OF THE PARTIES THAT BY ASSENTING TO THE TERMS  
17 OF THE SETTLEMENT, YOU RECOGNIZE THAT YOU HAVE AGREED TO A  
18 BINDING SETTLEMENT, WE ARE PUTTING THIS SETTLEMENT ON THE  
19 RECORD, AND THE TERMS OF THE SETTLEMENT WILL THEREFORE BE  
20 BINDING UPON THE PARTIES.

21           WE'LL START WITH THE PLAINTIFFS. FIRST OF ALL,  
22 JEFFREY L. MCCABE, MR. MCCABE, IF WOULD YOU COME TO THE  
23 MICROPHONE, SIR.

24           MR. MCCABE, DO YOU ASSENT TO THE TERMS OF THE  
25 SETTLEMENT?

1           MR. MCCABE: YES, I DO.

2           THE COURT: THANK YOU, SIR.

3           WE HAVE GARY KAHLER HERE. MR. KAHLER, WOULD YOU  
4 COME TO THE MICROPHONE, PLEASE.

5           ON BEHALF OF KAHLER INTERNATIONAL, INC., MR. KAHLER,  
6 DO YOU ON BEHALF OF KAHLER INTERNATIONAL, INC., ASSENT TO THE  
7 TERMS OF THE SETTLEMENT?

8           MR. KAHLER: YES, I DO.

9           THE COURT: THANK YOU, SIR.

10          ALL RIGHT. NOW TURNING TO THE DEFENSE SIDE.  
11 MR. ROSE, IF YOU WOULD PLEASE COME TO THE PODIUM.

12          MR. ROSE, ON BEHALF OF YOURSELF AS AN INDIVIDUAL,  
13 AND ON BEHALF OF FLOYD ROSE GUITARS AND FLOYD ROSE MARKETING,  
14 INC., DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

15          MR. ROSE: YES, I DO.

16          THE COURT: THANK YOU, SIR.

17          MR. ROSE: I AM SPEAKING FOR SOMEBODY ELSE, I GUESS.  
18 AP GLOBAL AS WELL.

19          THE COURT: YES. WHILE YOU'RE UP AT THE PODIUM, THE  
20 COURT HAS RECEIVED A LETTER FROM MR. CAPPICIO. I'M  
21 FORGETTING MY ITALIAN.

22          MR. ROSE: "CAPPICIO."

23          THE COURT: I SHOULD HAVE REMEMBERED THAT. I WENT  
24 TO ITALY LAST SEPTEMBER; HOW SOON I FORGET.

25          MR. CAPPICIO HAS INDICATED THAT YOU ARE HIS DESIGNEE

1 AT THIS SETTLEMENT CONFERENCE, AND THAT YOU HAVE THE  
2 UNFETTERED DISCRETION AND AUTHORITY TO ENTER INTO A  
3 SETTLEMENT ON BEHALF OF AP GLOBAL ENTERPRISES, INC.

4 SO, SIR, DO YOU, ON BEHALF OF AP GLOBAL ENTERPRISES,  
5 ASSENT TO THE TERMS OF THE SETTLEMENT?

6 MR. ROSE: YES, I DO.

7 THE COURT: THANK YOU, SIR.

8 ALL RIGHT. NEXT WE HAVE MR. XAVIER, VICE-PRESIDENT  
9 OF SALES AT DAVITT & HANSER MUSIC COMPANY.

10 MR. XAVIER, ON BEHALF OF DAVITT & HANSER'S MUSIC  
11 COMPANY, DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

12 MR. XAVIER: YES, YOUR HONOR, I DO.

13 THE COURT: IN ADDITION, THE COURT HAS RECEIVED A  
14 LETTER FROM PING WELL INDUSTRIAL COMPANY, LTD. PING WELL HAS  
15 INDICATED IN THIS LETTER THAT THEY DESIGNATE MR. XAVIER TO  
16 HAVE THE UNFETTERED DISCRETION AND AUTHORITY ON BEHALF OF  
17 THEM TO ENTER INTO A SETTLEMENT AT TODAY'S CONFERENCE.

18 AND, MR. XAVIER, ON BEHALF OF PING WELL, DO YOU  
19 ASSENT TO THE TERMS OF THE SETTLEMENT?

20 MR. XAVIER: YES, YOUR HONOR, I DO.

21 THE COURT: THANK YOU.

22 AND THEN WE HAVE ON BEHALF OF DEFENDANT SCHALLER  
23 ELECTRONIC GMBH, SIR, I DON'T WANT TO MISPRONOUNCE YOUR NAME.  
24 IS IT VALTEK (PHONETIC)?

25 MR. VALTEK: YES, YOUR HONOR



1           THE COURT:   OKAY.   BRETT VALTEK, SIR, ON BEHALF OF  
2   SCHALLER, DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

3           MR. VALTEK:   YES, SIR.

4           THE COURT:   THANK YOU.

5           I WANT TO THANK EVERYONE PRESENT FOR ALL YOU DID  
6   TODAY TO BRING ABOUT THIS SETTLEMENT.   IT WAS A LONG, LONG  
7   NEGOTIATION.   A LONG DAY'S JOURNEY INTO NIGHT, IN FACT, IF I  
8   MIGHT USE THAT LITERARY REFERENCE.   AND ALL OF YOU CONDUCTED  
9   YOURSELVES IN UTMOST GOOD FAITH, UTMOST PROFESSIONALISM,  
10   SOMETHING THE COURT APPRECIATES VERY MUCH.

11           I'M GOING TO GIVE YOU A DEADLINE FOR THE FILING OF A  
12   JOINT MOTION FOR DISMISSAL AND PROPOSED ORDER OF DISMISSAL.  
13   THE DEADLINE IS JULY 8TH.

14           THANK YOU VERY MUCH.

15           MR. CODDINGTON:   THANK YOU, YOUR HONOR.

16           MR. MILLS:   THANK YOU, YOUR HONOR.

17           MR. FAZIO:   THANK YOU, YOUR HONOR.

18           (PROCEEDINGS CONCLUDED AT 7:13 P.M.)

19                               -- 00000 --

20           I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
21   FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE  
22   ABOVE-ENTITLED MATTER.

23  
24           /S/CAMERON P. KIRCHER                       6-11-13  
25           TRANSCRIBER                               DATE